processor's share times the State cane sector allotment.

(1) Each cane processor's share, other than a new entrant, will be calculated as the processor's production base divided by the sum of the State's processor production bases.

(2) A processor's production base, other than a new entrants, is the sum of 0.50 times its ability to market plus 0.25 times its past processings plus 0.25 times its past marketings. These weights may be adjusted as CCC deems appropriate for the crop year.

(3) CCC will calculate an allocation for the Talisman processing facility, based on paragraph (b)(2) of this section and distribute the allocation among Florida processors according to the agreements between cane processors and the Secretary of the Interior dated March 25, and March 26, 1999.

(c) An informal hearing will be held in August of each year, if requested by affected sugarcane processors and growers by July 15th, to afford all interested persons the opportunity to comment on the next crop year's marketing allotments and allocations. After consideration of comments obtained at the hearing, a final determination on cane State allotments and processor allocations will be announced.

(d) During any crop year in which marketing allotments are in effect and allocated to processors, the quantity of sugar and sugar products that a processor markets shall not exceed the quantity of the processor's allocation.

(e) Paragraph (d) of this section shall not apply to:

(1) Any sugar marketings to facilitate the export of sugar or sugar-containing products,

(2) Any sugar marketings for nonhuman consumption, and

(3) Any processor marketings of sugar to another processor made to enable the purchasing processor to fulfill its allocation if such sales:

(i) Are made before May 1, and

(ii) Reported to CCC within 5 days of the date of sale.

(f) CCC may charge liquidated damages as specified in a surplus allocation survey and agreement on such sales made after May 1 if the purchasing processor had surplus allocation after May 1 because the purchasing processor provided incomplete or erroneous information to CCC.

§ 1435.308 Transfer of allocation, new entrants

(a) If a sugar beet or sugarcane processing facility is closed and the growers that delivered their crops to the closed facility elect to deliver their crops to another processor, the growers may petition the Executive Vice President, CCC, to transfer the share of allocation commensurate with the growers' production history from the processor that closed the facility to their new processor. CCC may grant the request to transfer the allocation upon:

(1) Written approval of the processing company that will accept the additional deliveries, and

(2) Evidence satisfactory to CCC that the new processor has the capacity to accommodate the production of petitioning growers.

(b) Subject to paragraph (a) of this section, CCC will eliminate the allocation of the processor who has been dissolved or liquidated in a bankruptcy proceeding and the allocation will be distributed to all other processors on a pro-rata basis.

(c) If the purchasing processor is not a new entrant, then the purchased plants must operate for the initial season and the following crop year for the purchasing processor to permanently obtain the allocation. CCC shall reassign the allocation on a pro rata basis if the purchased plants do not operate for the required 2 crop years.

(d) If the purchasing processor is a new entrant, then CCC shall immediately transfer allocation commensurate with the purchased factories' production history with no requirement on operating the facility for 2 crop years.

(e) Allocations, equal to the number of acres of proportionate shares being transferred times the State's per-acre yield goal, will be transferred between mills in proportionate share States, if the transfers are based on:

(1) Written consent of the crop-share owners, or their representative representatives,

(2) Written consent of the processing company holding the allocation for the subject proportionate shares,

(3) Written consent of the processing company that will accept the additional sugarcane deliveries, and

(4) Evidence, satisfactory to CCC, that the additional sugarcane deliveries will not exceed the processing capacity of the receiving company.

(f) New entrants, not acquiring existing facilities, may apply to the Executive Vice President, CCC, for an allocation.

(1) Applicants must demonstrate their ability to process, produce, and market sugar for the applicable crop year.

(2) CCC will consider adverse effects of the allocation upon existing processors and producers.

(3) New entrant cane processors are limited to 50,000 short tons, raw value, the first crop year.

(4) New entrant cane processors will be provided, as determined by CCC,

(i) A share of their State's cane allotment if the processor is located in Hawaii, Puerto Rico, Florida, Louisiana, or Texas, or

(ii) A share of the overall cane allotment if the processor is located in any state not listed in paragraph (f)(4)(i) of this section.

(5) If a new entrant acquires and reopens a factory that previously produced beet sugar from sugar beets and sugar beet molasses, but the factory last operated during the 1997 crop year, CCC will:

(i) Assign an allocation to the new entrant not less than the greater of 1.67 percent of the adjusted weighted average quantities of beet sugar produced by all processors during the 1998 through 2000 crop years, as determined under § 1435.307, or 1,500,000 hundredweight.

(ii) Reduce all other beet processor allocations on a pro rata basis.

[67 FR 54928, Aug. 26, 2002, as amended at 67 FR 65690, Oct. 28, 2002]

§ 1435.309 Reassignment of deficits.

(a) CCC will determine, by May 1, whether sugar beet or sugarcane processors will be able to market their respective allocations.

(b) Sugarbeet and sugarcane processors will report to CCC, by April 15, current inventories, estimated production, expected marketings, and any other pertinent factors CCC deems appropriate to determine a processor's ability to market its allocation.

(c) If CCC determines a sugarcane processor will be unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugarcane processors within that State, depending on the capacity of each other processor to fill the portion of the deficit to be reassigned to it, and accounting for interests of associated producers;

(2) If the deficit cannot be eliminated after reassignment within the same State, be reassigned to the other cane States based on the ability of processors in such States to market the deficit to be reassigned to such States, with the reassigned quantity to each State being allocated among its processors in proportion to initial processor allocations;

(3) If the deficit cannot be eliminated by paragraphs (c)(1) and (c)(2) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.

(4) If any portion of the deficit remains after paragraphs (c)(1), (c)(2), and (c)(3) of this section have been implemented, be reassigned to imports.

(d) If CCC determines that a sugar beet processor is unable to market its full allocation for the crop year in which an allotment is in effect, the deficit will:

(1) First, be reassigned proportionately to allocations of other sugar beet processors, depending on the capacity of other processors to fill the portion of the deficit to be reassigned to them, accounting for the interests of associated producers.

(2) If the deficit cannot be eliminated by paragraph (d)(1) of this section, be reassigned to CCC. CCC shall sell such quantity from inventory unless CCC determines such sales would have a significant effect on the sugar price.